

25 March 1977

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : John H. Waller
Inspector General

SUBJECT : Comments on the 18 March Draft National
Intelligence Act of 1977

I have the following general comments on this draft:

1. As the Proposed Master Outline and the Note on Concept of the National Intelligence Authority Act suggest, this bill would be an interim step in restructuring the Intelligence Community and strengthening the hand of the DCI. It addresses Community-level management and oversight matters, but does not address directly the charters of intelligence agencies or restrictions on intelligence activities. Without a clear view of the intended organizational relationship and role of the components of the Intelligence Community, it is difficult and perhaps premature to comment on the management arrangements proposed. In this vein, most of the comments on an earlier draft that were assembled and sent by the Legislative Counsel to the DCI on 17 March also apply to this draft.

2. The relationship between this Act and the National Security Act of 1947 is unclear. The draft would appear to transfer to the Director of National Intelligence responsibilities for Community matters now assigned to the Central Intelligence Agency by the National Security Act of 1947. There is no reference in the draft to existing statutes and, specifically, no indication that the National Security Act of 1947 would be superseded or modified.

3. Authorities for direction and control of Intelligence Community activities are given to DNI which conflict with authority and responsibilities of heads of departments and agencies - the two Master's problems. Role of ADNI's in directing and managing activities vice Agency heads is unclear and their degree of control or responsibility for activities now conducted in the Departments of Defense and State should be clearly defined.

4. The Draft creates confusion between what a DNI would control, as a line manager, and what he would coordinate as head of the Intelligence Community and as reviewer of tactical intelligence and intelligence-related activities. It might be better, and certainly would be stronger (in DNI terms) to have an NIA which managed certain subordinate activities - CIA, NSA, special reconnaissance activities; and coordinated certain other departmental activities - DIA, Military Services, ERDA, FBI, INR, etc. The present Draft is an incoherent compromise between our present arrangements and a DNI with real line authority. The Analysis suggests that this Draft is intended to separate CIA from the DCI and to make him more evenhanded. The Draft does not accomplish this if some NIA components are under his command and some are not. He will tend to rely more on those that are under his control.

5. The section on control of covert action is too detailed and intrudes too much on Presidential prerogatives.

6. Comments on the specific language of the draft are attached.

John H. Waller

Attachment: a/s

cc: DDA w/att.
DDI w/att.
DDO w/att.
DDS&T w/att.
OGC w/att.
OLC w/att.
Controller w/att.
 w/att.

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ATTACHMENT TO MEMO
FOR DDCI FROM IG
DATED 25 MAR 1977

SPECIFIC COMMENTS ON 18 MARCH DRAFT
NATIONAL INTELLIGENCE ACT OF 1977

<u>PAGE:</u>	<u>SECTION:</u>	<u>COMMENT:</u>
2	3(1)	"Foreign" should be added to disengage DNI and IC from domestic activities.
2	3(1)(C)	Delete. Redundant to Section 3(8). Would keep "special activities" concept separate from "intelligence activities".
2	3(2)	The definition of the term "National Intelligence" is a poor one. Suggest that it be constrained to foreign intelligence, otherwise the Intelligence Community would be authorized to collect information on U.S. domestic and military information related to national security. Deriving a legal distinction between national and tactical/departmental is a dubious exercise. If really needed, the definitions in Para. 6 of NSCID 1 are better: "National Intelligence is that intelligence required for the formulation of national security policy...Departmental intelligence is that intelligence which any department or agency requires to execute its own mission". The last sentence is redundant with Section 3(4) and should be deleted.
3	3(3)	The inclusions are too broad. Certain of the organizations produce tactical or departmental intelligence as well as national intelligence. Suggest deletion of second sentence.
3	3(5)	The definition of departmental intelligence quoted above is more accurate. "Other than special activities" should be deleted - in line with recommendation on Section 3(1)(C).

<u>PAGE:</u>	<u>SECTION:</u>	<u>COMMENT:</u>
3	3(6)	Why use the term "Intelligence Community" if it equates to "National Intelligence Authority"?
4	3(7)(B)	Why not use the term "Permanent Resident Alien" if this is what is meant. (See Analysis).
4	3(10)	This definition is not needed here as it is not peculiar to this Act.
5	4(a)	Why should the NIA be under the NSC rather than the President. Is there a good reason why SECSTATE and SECDEF should be over the DNI? The DNI's hand would be strengthened if he were to report to the President as the head of an Independent Office within the Executive Office of the President. This would also give public assurance of DNI independence and clear accountability to and direction from the President.
5	4(c)	Insert word "foreign" before "intelligence" in first sentence.
7	6(a)	"Direct" and "Control" conflicts with responsibilities of SECSTATE, SECDEF, etc., to direct and control activities assigned to their departments and agencies. This is a major issue to be clarified in any such legislation.
8	6(d)(4)	"direction....management". Same problem as above.
9	6(d)(5) & (6)	"prepare....budget....be responsible for the collection and control of all funds..." Same problem as above.
10	6(d)(16)	This should be limited to "foreign counter-intelligence". DNI not responsible for domestic CI.

<u>PAGE:</u>	<u>SECTION:</u>	<u>COMMENT:</u>
11	6(d)(20)(A)	"Government" should be inserted for clarity.
12	6(d)(21)	Add: "and for such support as may be required from the Department of Defense to insure continuity of NIA activities in wartime."
13	7(a)(2)(B) & (C)	"direction" and "management" imply line authority.
14	8(a) & (b)	Reporting to the AG should be limited to evidence of violation of Federal law in connection with official duties. Use similar language as worked out with Executive Order 11905 requirements and previous AG agreements. Present language would involve AG and Congress in administrative discipline matters of little significance.
14	9(a) and (b)	Language entirely too sweeping. Absurd to carry out completely and raises questions of separation of powers, Executive privilege, etc. The Section is not necessary and would be impossible to sensibly qualify. Delete section.
15	10(b)(1)	Raises questions of relationships to authorities and responsibilities of heads of departments and agencies with NIA components.
16	11	Does the NIARB replace existing groups such as PFIAB or IOB?
19	14(1)	"grave threats" is a stiffer requirement than at present. Would apply only in wartime. "Important to the National Security" is the current standard.
20	14(5)	Activities and projects may be conducted with PRC approval. Contradicts Sections 8-10 which calls for Presidential decision.

<u>PAGE:</u>	<u>SECTION:</u>	<u>COMMENT:</u>
20	14(8)-(10)	Intrusion on Presidential authority. Inappropriate prescription of how President receives advice. Not subject for detailed legislation.
21	14(10)	Withholds implementation until Congress is notified. Circumstances may dictate action before notification.
21	14(11)	Improper charge for DNI. President should make his own report or designate who will do it for him.
21	14(13) & (14)	There is no initial requirement to notify Congress on sensitive clandestine collection projects. Why require the PRC and DNI to notify Congress of changes. Any report to Congress should be responsibility of the President in matters requiring his approval.
22	14(18)	NIA cannot always control distribution of covertly supported materials published abroad and subsequently distributed in U.S. without NIA approval. Add: "for the purpose of" before open.
23	14(20)	Delete "or U.S. citizen". The previous phrase "U.S. Government personnel" should include all citizens under NIA control or sponsorship. NIA can't control activities of private citizens.
24	15(c)	It is not clear if this Committee is only concerned with foreign counterintelligence or with domestic counterintelligence, or both.

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